

**WASHINGTON STATE
EMPLOYMENT SECURITY DEPARTMENT**

**REQUEST FOR PROPOSAL (RFP)
RFP NO. 2010-021**

NOTE: *If you obtain this RFP from any other method than from Washington's Electronic Business Solution (WEBS) website at <https://fortress.wa.gov/ga/webs/> , you are responsible for sending your name, address, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.*

PROJECT TITLE: "Training Benefits" online outreach campaign

PROPOSAL DUE DATE: May 21, 2010, at 5 p.m., Pacific Daylight Saving Time, Olympia, Washington, USA.

EXPECTED TIME PERIOD FOR CONTRACT: Estimated start date of June 16, 2010, through early fall 2010.

The Employment Security Department reserves the right to extend the contract for up to two additional one-year periods at the sole discretion of the Department.

ELIGIBILITY REQUIREMENTS: This procurement is open to those bidders that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

CONTENTS OF THE REQUEST FOR PROPOSAL:

1. Introduction
2. General Information for Bidders
3. Proposal Contents
4. Evaluation and Contract Award
5. RFP Exhibits
 - A. Certifications and Assurances
 - B. Sample Contract Format with General Terms and Conditions

TABLE OF CONTENTS

1. Introduction	3
1.1 Purpose and Background.....	3
1.2 Objective and Scope of Work	3
1.3 Minimum Qualifications	4
1.4 Funding	4
1.5 Period of Performance	4
1.6 Contracting with Current or Former State Employees.....	4
1.7 Definitions.....	5
1.8 ADA	5
2. General Information for Bidders.....	6
2.1 RFP Coordinator	6
2.2 Estimated Schedule of Procurement Activities	6
2.3 Submission of Proposals.....	7
2.4 Proprietary Information/Public Disclosure	7
2.5 Revisions to the RFP.....	7
2.6 Minority & Women-Owned Business Participation.....	8
2.7 Acceptance Period	8
2.8 Responsiveness.....	8
2.9 Most Favorable Terms	8
2.10 Contract and General Terms & Conditions	9
2.11 Costs to Propose.....	9
2.12 No Obligation to Contract.....	9
2.13 Rejection of Proposals	9
2.14 Commitment of Funds.....	9
2.15 Insurance Coverage	9
3. Proposal Contents	11
3.1 Letter of Submittal	11
3.2 Campaign Strategies/Work Schedule	12
3.3 Experience/Success with similar Projects.....	12
3.4 Cost Proposal.....	13
4. Evaluation and Contract Award.....	13
4.1 Evaluation Procedure	13
4.2 Evaluation Weighting and Scoring	14
4.3 Oral Presentations may be Required	14
4.4 Notification to Proposers	14
4.5 Debriefing of Unsuccessful Proposers	14
4.6 Protest Procedure	15
5. RFP Exhibits	16
Exhibit A Certifications and Assurances.....	17
Exhibit B Sample Contract Format including General Terms and Conditions (GT&Cs)	18

1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Employment Security Department, hereafter called "Department," is initiating this Request for Proposals (RFP) to solicit proposals from individuals or organizations interested in providing services to include the purchase of online advertising space to promote a Department program called "Training Benefits." The Department will supply the contractor with the ads.

The Department is setting in motion several strategies to increase awareness of and participation in the state's Training Benefits Program. Among those strategies is an online outreach campaign.

During the current recession, unemployment has skyrocketed across the nation and here in our state. Among the victims are those with few job skills and those whose skills are no longer in high demand. The Training Benefits Program allows authorized individuals to receive weekly unemployment benefits without actively looking for a new job, while enrolled in approved training for a high-demand occupation. Sharpening the skills of our jobless workers gives them a better chance for a future that doesn't lead back to unemployment.

The outreach campaign will consist of two phases (a pilot phase and an expanded phase). The pilot phase targets five specific counties (King, Snohomish, Clark, Spokane, Walla Walla), then eventually expands to additional counties.

For additional information about the Training Benefits program, go to:

<http://www.esd.wa.gov/uibenefits/specialservices/training/training-benefits.php>

Or

Go to www.esd.wa.gov and type "training benefits" in the search box.

The Department intends to award *one* contract to provide the services described in this RFP.

1.2 OBJECTIVES AND SCOPE OF WORK

Our target audience consists of several categories of unemployed workers throughout Washington who must first meet basic eligibility requirements for unemployment benefits.

Eligibility for the Training Benefits Program requires participants to be unemployed and also meet one or more of the following criteria:

- Dislocated workers – skills, occupations no longer in demand
- Low-income workers (who earned \$11.12 an hour or less in their qualifying year) – likely to earn more money after training
- Disabled workers – unable to return to work in customary occupation
- Current National Guard – need training to find suitable work
- Recently discharged National Guard or regular military – need training to find suitable work

Demographics

The campaign should target unemployed workers. Based on Department statistics, our audience is:

- Lower income
- Education level typically less than a college degree
- Men and women, 18-55
- Most heavily concentrated in the Puget Sound region

CAMPAIGN PERIOD: Training Benefits (late spring to early fall 2010)

The online outreach campaign will occur from late spring to early fall of 2010, with placement of ads, timing of ads, and frequency of ads to be recommended by the contractor based on professional expertise and budget. (The Department is simultaneously conducting a direct-mail outreach campaign to promote Training Benefits, which is not part of this contract.)

SERVICES REQUIRED

- Purchase campaign-focused media buys on the Internet.
- Monitor campaign's effectiveness and regularly report findings to the Department.

OBJECTIVES

- Increase awareness of the Department's Training Benefits program.
- Increase the number of Training Benefits applicants.
- Drive potential applicants to our WorkSource locations.

1.3 MINIMUM QUALIFICATIONS

Minimum qualifications include:

- Licensed to do business in the State of Washington or provide a commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
- Experience creating strategies to reach a target audience with online ads.
- Experience purchasing online ad space and placing ads on the Internet

1.4 FUNDING

AVAILABLE BUDGET: Up to \$130,000, for two primary contract elements:

- Contractor's fee for placing ads and monitoring/measuring/reporting effectiveness of ads
- Payment to firms that display our ads

(Bid proposals will include cost breakdowns of these elements. The cost proposals will be scored as part of the process to determine which firm wins the contract.)

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about June 16, 2010, and to end in fall 2010. Amendments extending the period of performance, if any, shall be at the sole discretion of the Department.

The Department reserves the right to extend the contract for two one-year periods.

1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with the requirements prior to submitting a proposal that includes current or former state employees.

1.7 DEFINITIONS

Definitions for the purposes of this RFP include:

Department – The Employment Security Department is the Department of the state of Washington that is issuing this RFP.

Apparent Successful Contractor – The bidder selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Bidder – Individual or company interested in the RFP and that may or does submit a proposal in order to attain a contract with the Department.

Contractor – Individual or company whose proposal has been accepted by the Department and is awarded a fully executed, written contract.

Proposal – A formal offer submitted in response to this solicitation.

Proposer - Individual or company that submits a proposal in order to attain a contract with the Department.

Request for Proposals (RFP) – Formal procurement document utilized to solicit written proposals from potential suppliers. Both cost and non-cost factors are evaluated in addition to conditions of responsiveness and responsibility to achieve best value. The specifications and qualification requirements are written in an outcome based form allowing for consideration of a range of different solutions to meet the procurement need.

1.8 ADA

The Department complies with the Americans with Disabilities Act (ADA). Bidders may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape

2. GENERAL INFORMATION FOR BIDDERS

2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the Department for this procurement. All communication between the Bidder and the Department upon receipt of this RFP shall be with the RFP Coordinator, as follows:

Name	Jamie Swift
E-Mail Address	jswift@esd.wa.gov
Mailing Address	P.O. Box 9046 Olympia, WA 98507-9046
Physical Address for Delivery	212 Maple Park Drive Olympia, WA 98501
Phone Number	360-902-0904
Fax Number	360-902-9315

Any other communication will be considered unofficial and non-binding on the Department. Bidders are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Bidder.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	May 10, 2010
Question & answer period	May 10-14, 2010
Written answers to questions posted in WEBS by:	May 17, 2010
Proposals due	May 21, 2010
Evaluate proposals	May 24-28, 2010
Conduct oral interviews with finalists, if required	June 3, 2010
Announce "Apparent Successful Contractor" and send notification via fax or e-mail to unsuccessful proposers	June 4, 2010
Hold debriefing conferences (if requested)	June 9-10, 2010
Negotiate contract	June 4-10, 2010
Execute (sign) contract	June 16, 2010

The Department reserves the right to revise the above schedule.

2.3 SUBMISSION OF PROPOSALS

Proposals must be in hard copy.

HARD COPY PROPOSALS:

Bidders are required to submit four (4) copies of their proposal. Two copies must have original signatures and two copies can have photocopied signatures. The proposal, whether mailed or hand delivered, must arrive at the Department no later than 5 p.m. Pacific Time on May 21, 2010.

The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFP Coordinator.

Bidders mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Bidders assume the risk for the method of delivery chosen. The Department assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using facsimile transmission.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the Department and will not be returned.

2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this competitive procurement shall become the property of the Department. All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Commissioner of the Department, or his Designee, and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Bidder desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Bidder is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Bidder has marked as "Proprietary Information," the Department will notify the Bidder of the request and of the date that the records will be released to the requester unless the Bidder obtains a court order enjoining that disclosure. If the Bidder fails to obtain the court order enjoining disclosure, the Department will release the requested information on the date specified. If a Bidder obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, the Department shall maintain the confidentiality of the Bidder's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.5 REVISIONS TO THE RFP

The Department reserves the right to change the RFP Schedule or issue amendments to the solicitation at any time. The Department also reserves the right to cancel or reissue the solicitation in whole or in part and for any reason at the sole discretion of the Department at any time prior to execution of a contract.

In the event it becomes necessary to revise any part of the RFP, amendments will be posted on WEBS and bidders are responsible for checking WEBS for any addenda or changes to the RFP

Specific questions concerning the RFP shall be submitted during the question and answer period. Any oral responses given to questions shall be considered tentative. The Department will be bound only to the Department's written answers to questions. Questions arising in communication with the RFP Coordinator will be documented, answered in written form, and posted on WEBS at <https://fortress.wa.gov/ga/webs/>.

If you obtained this RFP by any other method, you are responsible for sending your name, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP addenda.

2.6 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Bidder/Proposer should seek to represent the state's interest in goal attainment and MWBE participation. Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

Washington's Electronic Business Solution (WEBS) is an Internet vendor registration and bid notification system. The system offers one online site where vendors can register to receive government bid notifications. Numerical M/WBE participation goals for this solicitation are dependent on the M/WBE firms registered in the categories for this solicitation. The Department's established annual procurement participation goals for MBE is 4.5% and for WBE, 2%. These goals are voluntary. For information on certified firms, bidders may contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov>.

2.7 ACCEPTANCE PERIOD

Proposals must provide 60 days for acceptance by Department from the due date for receipt of proposals.

2.8 RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Bidder is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The Department also reserves the right at its sole discretion to waive minor administrative irregularities.

2.9 MOST FAVORABLE TERMS

The Department reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Bidder can propose. There will be no best and final offer procedure. The Department does reserve the right to contact a Bidder for clarification of its proposal.

The apparent successful contractor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Bidder's

proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the Department.

2.10 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Bidder to submit its own standard contract terms and conditions in response to this solicitation. The Bidder may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. The Department will review requested exceptions and accept or reject the same at its sole discretion.

2.11 COSTS TO PROPOSE

The Department will not be liable for any costs incurred by the Bidder in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

2.12 NO OBLIGATION TO CONTRACT

This RFP does not obligate the State of Washington or the Department to contract for services specified herein.

2.13 REJECTION OF PROPOSALS

The Department reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

2.14 COMMITMENT OF FUNDS

The Commissioner of the Department or his delegate are the only individuals who may legally commit the Department to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15 INSURANCE COVERAGE

The Contractor is to furnish the Department with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the Department within fifteen (15) days of the contract effective date.

Liability Insurance

- 1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) **Business Auto Policy:** As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability ("Stop Gap") Insurance: In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The State of Washington, Employment Security Department, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Cancellation.** State of Washington, Employment Security Department, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
3. **Identification.** Policy must reference the State's contract number and the agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the Employment Security Department Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC
5. **Excess Coverage.** By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this contract.

Worker's Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

Proposals must be written in English and submitted on eight and one-half by eleven inch (8 ½" x 11") paper with tabs separating the major sections of the proposal. The four major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP);
2. Campaign strategies and work schedule
3. Experience/success with similar projects
4. Cost proposal

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Bidder in preparing a thorough response.

Items marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Bidder and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Bidder (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. If the Bidder does not have a UBI number, the Bidder must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
5. Location of the facility from which the Bidder would operate.
6. Identify any State employees or former State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Bidder's organization. If following a review of this information, it is determined by the Department that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

3.2 CAMPAIGN STRATEGIES/WORK SCHEDULE (SCORED)

Bidders' proposals should address the following:

A. Online strategies for reaching target audience and work schedule

- How this project will be executed, including strategies for reaching the intended audience and driving that audience to the Training Benefits landing page.
- The types of Web sites that would be utilized to reach target audience.
- A plan for containing the reach of the online ads to the five targeted counties during the initial phase of the campaign, then expanding statewide over time to meet the goals of the campaign.
- Duration the ads will be displayed, the estimated number of impressions that will be purchased, and the estimated percentage of target audience we'll reach.
- A work schedule that lays out timelines and deadlines for the required work.

B. A plan for monitoring campaign effectiveness (e.g., click-throughs from ads to Training Benefits home page on www.esd.wa.gov), communicating with the Department and adjusting/improving the campaign as it progresses.

3.3 EXPERIENCE/SUCCESS WITH SIMILAR PROJECTS

Bidders' proposals should address the following:

A. Experience and history of success with similar media-buy projects. (SCORED)

- Please include detailed explanations of three campaigns you have executed, including strategies you used to reach the intended audience. Include dates of campaigns and contact information.

B. Related Information (MANDATORY)

1. If the Bidder or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the Department, the contract number and project description and/or other information available to identify the contract.
2. If the Bidder's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the Department previously or currently employed by, job title or position held and separation date.
3. If the Bidder has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Bidder's position on the matter. The Department will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Bidder in the past five years, so indicate.

C. References (SCORED)

Preferably, references will have first-hand experience working with you on a campaign similar to the Training Benefits online advertising campaign.

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three (3) business references for whom work has been accomplished and briefly describe the type of service provided. The Bidder must grant permission to the Department to contact the references and others who may have pertinent information regarding the Bidder's qualifications and experience to perform the services required by this RFP. Do not include current

Department staff as references. References will be contacted for the top-scoring proposal(s) only.

D. OMWBE Certification (OPTIONAL)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm and/or women-owned firm(s) will be participating on this project. For information: <http://www.omwbe.wa.gov>.

3.4 COST PROPOSAL (SCORED)

The maximum fee for this contract must be One Hundred Thirty Thousand Dollars (\$130,000) or less to be considered responsive to this RFP.

The evaluation process is designed to award this procurement not necessarily to the Bidder of least cost, but rather to the Bidder whose proposal best meets the requirements of this RFP. However, Bidders are encouraged to submit proposals which are consistent with State government efforts to conserve state resources.

Bidders' proposals should address the following:

- A bid that breaks out the two major elements of the contract:
 - Cost of the ad buys
 - Firm's fee for purchasing the ads

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Bidder is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Bidders are required to collect and pay Washington state sales tax, if applicable.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

4. EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by the Department, which will determine the ranking of the proposals.

Items in Section 3, Proposal Contents, marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

The Department, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

The RFP Coordinator may contact the Bidder for clarification of any portion of the Bidder's proposal.

4.2 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Quality of proposed online strategies for reaching target audience/work schedule	35 Points
Plan for monitoring campaign, communicating with Department, making adjustments during campaign	15 Points
Demonstrated experience/success with online ad campaigns	35 Points
Cost proposal	15 Points
GRAND TOTAL	100 Points

Department reserves the right to award the contract to the Bidder whose proposal is deemed to be in the best interest of the Department and the state of Washington.

4.3 ORAL PRESENTATIONS MAY BE REQUIRED

The Department may after evaluating the written proposals elect to schedule oral presentations of the finalists. Should oral presentations become necessary, the Department will contact the top-scoring firm(s) from the written evaluation to schedule a date, time and location. Commitments made by the Bidder at the oral interview, if any, will be considered binding.

The oral presentation will determine the apparent successful contractor.

4.4 NOTIFICATION TO PROPOSERS

The Department will notify the Apparently Successful Contractor of their selection in writing upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by e-mail or facsimile.

4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Bidder. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful Bidder Notification is e-mailed or faxed to the Bidder. Debriefing requests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the third business day following the transmittal of the Unsuccessful Bidder Notification. The debriefing must be held within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the firm's proposal;
- Critique of the proposal based on the evaluation;
- Review of proposer's final score in comparison with other final scores without identifying the other firms.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.6 PROTEST PROCEDURE

Protests may be made only by Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Bidder is allowed three (3) business days to file a protest of the acquisition with the Department's Contracts Office. Protests must be received by the Department's Contracts Office no later than 4:30 PM, local time, in Olympia, Washington on the third business day following the debriefing. Protests may be submitted by e-mail or facsimile, but must then be followed by the document with an original signature.

Bidders protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Bidders under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the RFP number, grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests must be addressed to the Contracts office as follows:

Contracts Office
Employment Security Department
P.O. Box 9046
Olympia, WA 98506-9046

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or Department policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) Department's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the Department. The Department's Commissioner or an employee delegated by the Commissioner who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Bidder that also submitted a proposal, such Bidder will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the Department's action; or
- Find only technical or harmless errors in the Department's acquisition process and determine the Department to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the Department options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the solicitation document and begin a new process, or

--Make other findings and determine other courses of action as appropriate.

If the Department determines that the protest is without merit, the Department will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the Department without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that the Department will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the Department, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant the Department the right to contact references and others, who may have pertinent information regarding the ability of the Bidder and the lead staff person to perform the services contemplated by this RFP.
10. I/we declare, by submission of this proposal, that we are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.10, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

On behalf of the Bidder submitting this proposal, my name below attests to the accuracy of the above statement. *If electronic, also include:* We are submitting a scanned signature of this form with our proposal.

Signature of Proposer

Title

Date

ESD CONTRACT NO. _____ OTHER PARTY NO. _____

CONTRACT BETWEEN
WASHINGTON STATE
EMPLOYMENT SECURITY DEPARTMENT
AND
[INSERT CONTRACTOR'S LEGAL NAME]

This Contract is made and entered into by and between the Washington State Employment Security Department, hereinafter called "ESD", located at *[NOTE: Insert ESD division and mailing address. Delete this note when done.]*, and *[NOTE: Insert Contractor's legal name. Delete this note when done.]*, hereinafter called "Contractor", at *[NOTE: Insert Contractor's address. Delete this note when done.]*.

PURPOSE

It is the purpose of this Contract to *[NOTE: provide a brief, general description of the purpose of the Contract. For example, "It is the purpose of this Contract to conduct a training class for ten employees of the Employment and Training Division in the use of Microsoft Word software." Or, "It is the purpose of this Contract to have the Contractor conduct a study of _____, and to provide a report of said study to ESD." Delete this note when done.]*.

In consideration of the terms and conditions contained herein, including attached exhibits, the parties mutually agree as follows:

CONTRACT MANAGEMENT

ESD's Program Manager, or his/her successor shall provide the Contractor the assistance and guidance necessary for the performance of this Contract. ESD's Program Manager shall be responsible for the review and acceptance of the Contractor's performance, deliverables, invoices and expenses, and accepting any reports from the Contractor.

ESD Program Manager responsible for management of this Contract is:

Name: _____
Title: _____
Telephone Number: _____
FAX Number: _____
E-mail: _____

Contractor staff member responsible for management of this Contract is:

Name: _____
Title: _____

Telephone Number: _____
FAX Number: _____
E-mail: _____

STATEMENT OF WORK

The Contractor shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit A, Statement of Work, attached hereto and incorporated herein.

[NOTE: The Statement of Work (SOW) is the most important part of the Contract. In this case "thorough" and "complete" are the watchwords. One method to assure that you have a complete SOW is to ask the traditional questions: How, Who, What, When, Where, and Why. You need to create a clear understanding between you and the Contractor as to Who will do What, When and Where, Why it will be done, and How it will be done. Use simple, straightforward language. A clear, concise and thorough Statement of Work can prevent possible disputes. Always remember: The Contract must be auditable. Link the work to the payment. The SOW can be incorporate herein or as Exhibit A. If you incorporate the SOW herein, please make corrections to the paragraph above and the section entitled Order of Precedence. Delete this note when done.]

TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by the Terms and Conditions contained in the text of this Contract instrument and the General Terms and Conditions attached hereto as Exhibit B and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Contract shall start on *[Insert start date]* or when signed by both parties, whichever is later, and end on *[Insert end date]* unless terminated sooner as provided herein.

[NOTE: By law and internal policy, Contracts must be in writing and cannot start prior to the date of execution. Only certain persons within ESD have delegated signature authority to commit ESD through the execution of Contracts. Oral agreements, or agreements to start services prior to execution of the Contract, must be avoided. Delete this note when done.]

[NOTE: Use the following paragraph only if this Contract is required to be filed with OFM. If you are not sure about this requirement, call the Contracts Office. Delete this note when done.]

Under the provisions of Chapter 39.29 RCW, this Contract is required to be filed with the state of Washington, Office of Financial Management (OFM). Contracts required to be so filed are not effective, and no work may be commenced nor payment made therefore, until ten (10) working days following the date of filing, and until approved, if required, by OFM. ESD will, prior to the effective date of this Contract, notify the Contractor of the date this Contract was so approved and its effective date. In the event OFM fails to

approve this Contract, it shall be null and void.

REPORTING

The Contractor shall provide the ESD Program Manager *[NOTE: Insert daily, weekly, monthly, or as agreed. Delete this note when done.]* status report(s) on Contract activity. *[NOTE: Identify all written reports, documents, deliverables that the Contractor must produce for you. Delete this note when done.]*

PAYMENT SCHEDULE

The parties have agreed that the total compensation including expenses payable to the Contractor, for satisfactorily accomplishing the work set forth in Exhibit A, Statement of Work, will not exceed \$*[NOTE: Enter the not to exceed amount. Delete this note when done.]*. Compensation for services shall be in accordance with the budget, Exhibit A-1, attached hereto and incorporated herein.

[NOTE: Even if you have a detailed budget, you will want to add language here or in Exhibit A as to how payments will actually be made. ESD may not pay for goods or services not received. Generally, payment is made upon completion of the Statement of Work. However, you may establish certain progress payments based on an agreed to set of deliverables, such as completion of data collection, or receipt of a draft report. The important part to remember in establishing deliverables is that they should relate to point in the progress of completion of the Statement of Work, and that ESD would receive something of value at that point if the Contract were discontinued. If you don't have a budget, strike the sentence referring to Exhibit A-1 and detail the compensation here. Include hourly rates or payments for deliverables. Delete this note when done]

[NOTE: You must include one, not both, of the following travel clauses. Delete this note when done]

The Contractor will not be reimbursed for any travel expenses. **OR**

The Contractor will be reimbursed for subsistence, lodging and point to point mileage at rates not to exceed those shown in the current State travel reimbursement rates, Schedule A, *[Insert name of Schedule A]*, and Schedule B, *[Insert name of Schedule B]*, attached hereto as Exhibit E, *[Insert name of Exhibit E]*. The maximum amount of compensation to be paid to the Contractor for such expenses shall not exceed \$*[Insert dollar amount]*, which amount is included in the compensation total above. Reimbursement by ESD for other travel expenses such as parking, taxis etc. will be in accordance with applicable receipts and justifications submitted to ESD. All travel expenses and receipts are to be included in the invoices submitted by the Contractor to ESD.

BILLING PROCEDURE

The Contractor shall submit invoices *[NOTE: Weekly, monthly – use appropriate time period. Delete this note when done.]* for services performed under this Contract on an Invoice Voucher (Form A-19) prepared in duplicate (original and one copy). Invoices shall include such information as is necessary for ESD to determine the exact nature of all expenditures, identify all personnel for whom compensation is sought, and goods or services provided to and received by ESD. ESD must receive all invoices no later than *[Insert date]. [NOTE: ESD Program Manager must be aware of fund source cut off date. If you have no fund cut off date, you may enter a date within thirty (30) days of completion of the Contract. Delete this note when done.]* Failure by the Contractor to submit the bill by the date specified above may result in non-payment. ESD shall pay the Contractor for completed and approved work within thirty (30) days of receipt of invoice.

Each invoice will clearly indicate that it is "FOR SERVICES RENDERED IN PERFORMANCE UNDER ESD CONTRACT NUMBER _____". The original and one copy of each invoice voucher shall be submitted to:

Employment Security Department
Attention: _____

_____, WA., 98_____

Payment for work performed shall be made in accordance with *[NOTE: specify payment based upon satisfactory acceptance of each deliverable, monthly progress payments based on work performed, payment after completion of each major part or phase of the Contract, payment at the conclusion of the contract, etc. Delete this note when done.]*

ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- 1) Applicable Federal and State Statutes and Regulations;
- 2) Those Terms and Conditions as contained in this basic contract instrument;
- 3) The General Terms and Conditions attached hereto as Exhibit B and incorporated herein;
- 4) The Statement of Work attached hereto as Exhibit A and incorporated herein; and
- 5) Any other provisions of this Contract whether incorporated by reference or otherwise.

USE AND DISCLOSURE OF INFORMATION

The Contractor shall use any private and confidential information provided under this Contract solely for the purpose for which the information was disclosed. The Contractor shall not misuse any private and confidential information under this Contract. The Contractor shall not disclose any private and confidential information unless the disclosure is authorized by law. The misuse or unauthorized release of private and confidential information shall subject Contractor, its employees or agents to a civil penalty of Five Thousand dollars (\$5,000) and other applicable sanctions under state and federal

law.

ALL WRITINGS CONTAINED HEREIN

This Contract sets forth in full the entire agreement of the parties in relation to the subject matter hereof. Any other agreement, representation, or understandings, verbal or otherwise, relating to the professional services of the Contractor or otherwise dealing in any manner with the subject matter of this Contract is hereby deemed to be null and void and of no force and effect whatsoever.

IN WITNESS WHEREOF, the parties have executed this Contract.

[NOTE: Signatures must not be on a page alone. Delete note when done]

[Insert other party's legal name.]

Washington State
Employment Security Department

By: _____

By: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

Attachments:

- Exhibit A** **Statement of Work** *(If required)*
- Exhibit B** **General Terms and Conditions**
- Exhibit C** **Certification Regarding Lobbying**
- Exhibit D** **Certification Regarding Debarment and Suspension**
- Exhibit E** **State Travel Reimbursement Information** *(If required)*

EXHIBIT B**GENERAL TERMS AND CONDITIONS****INDEX**

<u>ITEM</u>	<u>PAGES</u>
PART I - DEFINITIONS	25
PART II - GENERAL CONDITIONS.....	26
A. ACCEPTANCE.....	26
B. ACCESS TO RECORDS AND FACILITIES / AUDITS.....	26
C. ADVANCE PAYMENTS PROHIBITED	26
D. ASSIGNMENT	26
E. ASSURANCES.....	27
F. ATTORNEY FEES AND COSTS	27
G. CHANGES AND MODIFICATIONS	28
H. COMMENCEMENT OF CONTRACT WORK.....	28
I. CONFLICT OF INTEREST.....	29
J. CONFORMANCE	29
K. CONTRACTOR REGISTRATION.....	29
L. COPYRIGHT PROVISIONS.....	29
M. COVENANT AGAINST CONTINGENT FEES	30
N. DEBARMENT AND SUSPENSION	30
O. DISALLOWED COSTS	31
P. DISPUTES	31
Q. DUPLICATION OF BILLED COSTS.....	31
R. GOVERNING LAW	31
S. INDEMNIFICATION, INSURANCE AND BONDING.....	31
T. INDEPENDENT CAPACITY OF CONTRACTOR	33
V. INDUSTRIAL INSURANCE COVERAGE.....	33
W. LICENSING AND ACCREDITATION	34
X. LIMITATION OF SIGNATURE AUTHORITY	34
Y. LOBBYING ACTIVITIES.....	34
Z. MAINTENANCE OF EFFORT.....	34
AA. NONDISCRIMINATION	34
BB. PATENT RIGHTS	36
CC. PELL GRANTS	36
DD. PRICE WARRANT	36
EE. RECORD RETENTION	36
FF. SAFEGUARDING OF CLIENT INFORMATION	36
HH. SEVERABILITY	37
II. SINGLE AUDIT ACT REQUIREMENTS.....	37
JJ. SITE SECURITY	38
KK. SMALL, MINORITY, AND WOMEN-OWNED BUSINESS ENTERPRISES	38

LL. SUBCONTRACTING..... 38

MM. TAXES 39

NN. TERMINATION, SUSPENSION AND REMEDIES..... 39

OO. TERMINATION PROCEDURE..... 40

PP. TREATMENT OF ASSETS 41

QQ. USE OF NAME PROHIBITED 41

RR. WAIVER..... 42

SS. ENERGY POLICY AND CONSERVATION ACT 42

TT. CLEAN AIR ACT 42

UU. DAVIS-BACON ACT 42

VV. COPELAND ANTI-KICKBACK ACT 42

WW. WAGES AND HOURS 42

EQUAL OPPORTUNITY IS THE LAW 243

GENERAL TERMS AND CONDITIONS

PART I - DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below.

- A. "CLIENT" shall mean any agency, firm, organization, individual or other entity applying for or receiving services under this Contract.
- B. "CONTRACTOR" shall mean that agency, firm, organization, individual or other entity performing services under this Contract. It shall include any SUBCONTRACTOR retained by the prime contractor as permitted under the terms of this Contract.
- C. "AGENCY" shall mean the Employment Security Department of the state of Washington, any division, section, office, unit or other entity of that Agency or any of the officers or other officials lawfully representing the Agency.
- D. "MINORITY BUSINESS ENTERPRISE," "MINORITY-OWNED BUSINESS ENTERPRISE," or "MBE" shall mean a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the Office of Minority and Women's Business Enterprises. The minority owners must be United States citizens or lawful permanent residents.
- E. "SUBCONTRACTOR" shall mean one, not in the employment of the Contractor, who is performing all or part of those services under this Contract under Contract from the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" mean SUBCONTRACT(s) in any tier.
- F. "WOMEN'S BUSINESS ENTERPRISE," "WOMEN-OWNED BUSINESS ENTERPRISE," or "WBE" shall mean a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the Office of Minority and Women's Business Enterprises. The women owners must be United States citizens or lawful permanent residents.

PART II - GENERAL CONDITIONS

A. ACCEPTANCE

It is understood and agreed by and between the Agency and the Contractor that the Contractor's payment is conditioned upon satisfactory performance and acceptance by the Agency. The Agency reserves the right to withhold payment of any deliverable contingent upon acceptance of the deliverable by the Agency. If defects preventing acceptance of a deliverable are present, the Agency shall immediately notify the Contractor in writing of the nature of the defects and the method of remedy of those defects. The Contractor will take timely action to remedy defects as to permit acceptance of the subject deliverable. Notwithstanding the other provisions of this Contract, the Agency shall not unreasonably withhold acceptance of a deliverable nor reimbursement of the Contractor.

B. ACCESS TO RECORDS AND FACILITIES / AUDITS

The Office of the State Auditor, federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives, and any persons duly authorized by the Agency shall have full access to and the right to examine and copy any or all books, records, papers, documents and other material regardless of form or type which are pertinent to the performance of this Contract, or reflect all direct and indirect costs of any nature expended in the performance of this Contract. In addition, these entities shall have the right to access, examine and inspect any site where any phase of the program is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office, or other locations of the Contractor. The Contractor shall maintain its records and accounts in such a way as to facilitate the audit and examination, and assure that Subcontractors also maintain records that are auditable. Access shall be at all reasonable times not limited to the required retention period but as long as records are retained, and at no additional cost to the Agency.

C. ADVANCE PAYMENTS PROHIBITED

No payment in advance or in anticipation of services or supplies to be provided by this Contract shall be made by the Agency. In cost reimbursement contracts, the Contractor shall be entitled only to reimbursement for expenses incurred during the contract period for work accomplished as provided elsewhere in this Contract. In fixed unit price contracts, the Contractor shall be entitled only to payment for work accomplished during the contract period and in accordance with the terms of this Contract.

D. ASSIGNMENT

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

E. ASSURANCES

The Agency and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

If this Contract is funded by the Workforce Investment Act (WIA), the Contractor shall conduct the program in accordance with the existing or hereafter amended WIA, the U.S. Department of Labor's regulations relating to WIA, and the Washington State WIA Policies.

Assurances Under Title I of WIA

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship status as a lawfully admitted immigrant authorized to work in the United States, or participation in any WIA Title I – financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I – financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I – financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

F. ATTORNEY FEES AND COSTS

If any litigation is brought to enforce this Contract or any litigation arises out of any contract term, clause or provision, each party shall be responsible for its own expenses, costs and attorney fees.

G. CHANGES AND MODIFICATIONS

1. The Agency or Contractor may, from time to time, request changes in the services to be performed, or in the project undertaken. Such changes, including any increase or decrease in the amount of payment or reimbursement, which are mutually agreed upon by and between the Agency and the Contractor shall be incorporated in written modifications to this Contract.
2. The Contractor may make changes to the budget, without a formal modification to the contract and without securing the prior approval of the Agency, under the following conditions:
 - a. The revisions must not result in the need for additional funding.
 - b. Such changes must not alter the scope of the Contract's Statement of Work and must not be prohibited by applicable federal or state statutes or regulations.
 - c. No transfers are allowed from the training category or direct payments to trainees to other expense categories without a formal contract modification.
 - d. The Contractor may vary actual expenditures within the major cost categories of the budget without securing the prior approval of the Agency when such variances do not exceed ten percent (10%) of the total costs originally budgeted in that category. Such variances may be between line items only and may not alter the total amount of money originally budgeted in the major cost category. The Contractor will send written notices of such changes to the Agency.
3. Alteration of the terms of this Contract shall be valid only when in writing and signed by the authorized representatives of the parties.

H. COMMENCEMENT OF CONTRACT WORK

Unless specifically exempted, the state of Washington Office of Financial Management (OFM) requires that all sole source personal service contracts and amendments thereto and competitively bid personal service contracts for management consulting, organizational development, marketing, communications, employee training and employee recruiting be approved by OFM to become binding. The personal service contract and amendments thereto must be filed with OFM at least ten (10) working days prior to the effective date. No work may be performed nor any payment be rendered or obligation for future payment be incurred prior to the completion of the ten (10) working day period and approval of OFM.

I. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the Agency that there is a violation of the Ethics in Public Service Act, RCW 42.52, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

In the event this Contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agency makes any determination under this clause shall be an issue and may be reviewed as provided in the DISPUTES clause of this Contract.

J. CONFORMANCE

If any provision of this Contract is in conflict with or violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

K. CONTRACTOR REGISTRATION

The Contractor agrees to complete registration with the Department of Revenue, Department of Labor and Industries New Account Division and Employment Security Tax Administration by having filed a master business application prior to the execution of this Contract and to pay any taxes, fees, or deposits required by the state as a condition of providing services under this Contract. Contractor will provide the Agency with its Washington Unified Business Identifier (UBI) number and its Washington Department of Revenue tax account number, and, if applicable, its Labor and Industries account number and its Unemployment Insurance tax number, if registration with these agencies occurred prior to January 2, 1987. Required information will be provided prior to the Contractor commencing services under this Contract.

L. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright Laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under this Contract, but that incorporate preexisting materials not produced under this Contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

In cases where such materials have been purchased with federal funds, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes;

- (a) The copyright in any work developed under a contract; and
- (b) Any rights of copyright to which a contractor purchases ownership with contract funding support.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

M. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or otherwise recover by other means the full amount of such commission, percentage, brokerage or contingent fees. In no event shall the Agency be liable for any brokerage or contingent fees.

N. DEBARMENT AND SUSPENSION

The Contractor has provided, in Exhibit D to this Agreement, its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549, and "Debarment and Suspension, codified at 29 CFR part 98.

O. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

P. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a Dispute Resolution Board, or arbitration.

Q. DUPLICATION OF BILLED COSTS

The Contractor shall not bill the Agency for costs if the Contractor is being paid by another funding source for those same costs. Workforce Investment Act (WIA) costs are defined as any (1) administration, (2) direct training or (3) training related or supportive service charges.

R. GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

S. INDEMNIFICATION, INSURANCE AND BONDING

1. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the state of Washington, the Agency, and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any Subcontractor, or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform this Contract. Contractor's obligation to indemnify, defend and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees or officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

2. The Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:
 - a. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of Contract activity but no less than One Million dollars (\$1,000,000) per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
 - b. Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is:
One Millions dollars (\$1,000,000) per occurrence, using a Combined Single Limit for bodily injury and property damage
 - c. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/policies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give Agency thirty (30) days' advance notice of any insurance cancellation.
3. In the event the Contractor has been designated an agent for receiving or disbursing funds from the Agency, or where the Contractor has been furnished property in which the Agency has title in order to perform the responsibilities under this Contract, the Contractor shall ensure that:
 - a. Every officer, director or employee who is authorized to act on behalf of the Contractor or any Subcontractors for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks or other instruments of payment for program costs is bonded to provide protection against loss.
 - 1) Fiduciary bonding secured pursuant to this Contract must have coverage of One Hundred Thousand dollars (\$100,000) or the highest planned advance or reimbursement for the program year.
 - 2) The Agency will require proof of fiduciary bonding and insurance coverage. The Contractor will provide copies of bonding and insurance instruments or certifications of same from the bonding/ insurance issuing agency. The copies or certifications will show the bonding or insurance coverage, who is covered, and the amounts.
4. If self-insured, the Contractor warrants that it will maintain coverage sufficient to cover any liability specified above that may arise from the performance of this Contract, and

that the Contractor's Risk Officer or appropriate individual will provide to the Agency evidence of such insurance.

5. The Contractor will provide the Agency with a copy of the applicable insurance facesheet(s) or certification of self-insurance reflecting these coverage's and limits defined in this section. Insurance coverage(s) must be effective no later than the effective date of this Contract and for the term of this Contract. Contractor shall submit renewal certificates as appropriate during the term of this Contract.

T. INDEPENDENT CAPACITY OF CONTRACTOR

The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as, nor claim to be an officer or employee of, the Agency or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

U. INFORMATION TECHNOLOGY RESOURCES

All WorkSource partners, customers and WIA service providers are required to conserve and protect state resources for the benefit of the public interest. This requirement is necessary to maintain public trust, conserve public resources and protect the integrity of state information resources and systems. Active compliance with this requirement will limit risk and liability for WorkSource partners and customers, as well as individual employees.

All WorkSource partners, customers and WIA service providers must conform to WIA Policy #3460 and ESD Policy and Procedure #2016, each of which is hereby incorporated by reference when using ESD-provided state-owned information technology resources.

V. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund.

The Agency may:

- Deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by Agency under this Contract; and
- Transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.

This provision does not waive any of L&I's right to collect from the Contractor.

W. LICENSING AND ACCREDITATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this Contract.

X. LIMITATION OF SIGNATURE AUTHORITY

Only the Commissioner or Commissioner's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Commissioner or Commissioner's delegate.

Y. LOBBYING ACTIVITIES

The Contractor has provided, in Exhibit C to this Agreement, its certification that it is in compliance with the requirements of 29 CFR Part 93, restricting lobbying activities. The Contractor shall also make available upon request required disclosure information if the Contractor participates in lobbying activities during the Contract period.

Z. MAINTENANCE OF EFFORT

The Contractor shall ensure the following:

- That funds for training programs do not impair existing contracts for services, or result in the substitution of Federal funds for other funds in connection with work to be performed, including services normally provided by temporary, part-time or seasonal workers, or through subcontracting such services; and
- That funds for training programs result in an increase in employment and training opportunities over those which would otherwise be available.

AA. NONDISCRIMINATION

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity funded in whole or in part by this Contract on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United

States, or his or her participation in any WIA Title I-financially assisted program or activity.

The Contractor shall comply with the nondiscrimination and equal opportunity laws described in Section 188 of WIA of 1998, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972; and the Americans with Disabilities Act of 1990.

The Contractor must not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIA Title I - financially assisted program or activity;
- Providing opportunities in, or treating any person in regard to, such a program or activity; or
- Making employment decision in the administration of, or in connection with, such a program or activity.

The Contractor also ensures that it will comply with 29 CFR, Part 37; including the Methods of Administration (MOA) developed by the state of Washington Employment Security Department and any WIA policies and procedures issued.

The Contractor shall promptly notify the State Equal Opportunity (EO) Officer at the Employment Security Department of any administrative enforcement actions or lawsuits filed against it alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, or political affiliation or belief; and against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity. The State EO Officer will notify the Director, Civil Rights Center (CRC), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

The Contractor shall post the attached "Equal Opportunity is the Law" notice prominently in reasonable numbers and places; shall disseminate the notice in internal memoranda, other written or electronic communications; shall include the notice in handbooks or manuals; make the notice available during orientations and to each participant. A signed copy of the notice will also be made a part of the participant's file. All medical information and/or information regarding a participant's disability must be kept confidential and maintained in a file that is separate from the participant's file.

The Contractor shall include the following Equal Opportunity tagline in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe WIA Title I financially assisted programs or activities:

“*[Insert name of Organization]* is an equal opportunity employer and provider of employment and training services. Auxiliary aids and services are available upon request to persons with disabilities.”

In the event that one of the parties hereto refuses to comply with the above provision, the TERMINATION, SUSPENSION AND REMEDIES clause (Section NN) may be utilized.

BB. PATENT RIGHTS

The Agency retains the entire right, title and interest to each invention developed during the performance of Contract services. The Agency shall receive prompt, written notice of each notice or claim of patent infringement received by the Contractor with respect to patents developed during its performance of Contract services.

CC. PELL GRANTS

If this Contract is WIA funded and involves participant training at institutions that are certified to participate in student financial aid, as appropriate the Contractor shall incorporate the use of Pell Grants to offset the costs of training, such as tuition, books, supplies, transportation, child care, miscellaneous expenses, and/or special costs for disabled participants.

DD. PRICE WARRANT

The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of those charged any other client for the same services performed by the same individuals.

EE. RECORD RETENTION

Contractor shall retain all books, records, documents and other material which reflect all direct and indirect costs of any nature expended in the performance of this Contract, including participant data for a period of three (3) years after final payment under this Contract if WIA funded, or six (6) years from termination of the Contract if non-WIA funded. Records shall be retained beyond the above referenced retention periods if litigation or audit is begun prior to the end of the period referenced above, or if a claim is instituted prior to the end of the period referenced above involving the Contract covered by the records. In these instances, the records will be retained until the litigation, claim or audit has been finally resolved.

Records regarding discrimination complaints under WIA and actions taken thereunder shall be maintained for a period of not less than three (3) years from the date of resolution of the complaint.

FF. SAFEGUARDING OF CLIENT INFORMATION

The use or disclosure by any party of any information concerning a program recipient or client for any purpose not directly connected with the administration of the Agency's or the Contractor's responsibilities with respect to contracted services provided under this Contract is prohibited except by written consent of the recipient or client, his/her attorney or his/her legally authorized representative.

The Contractor shall use any private and confidential information provided under this Contract solely for the purpose for which the information was disclosed. The Contractor shall not disclose or misuse any private and confidential information under this Contract unless the disclosure is authorized by law. The misuse or unauthorized release of private and confidential information shall subject contractor, its employees or agents to a civil penalty of Five Thousand dollars (\$5,000) and other applicable sanctions under state and federal law (50.13 RCW).

GG. SALARY AND BONUS LIMITATIONS (NOT APPLICABLE TO VENDORS)

In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading 'Employment and Training' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A-133. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub-recipients of such funds, taking into account factors including the relative cost-of-living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs. See Department of Labor Training and Employment Guidance Letter (TEGL) 5-06 for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

HH. SEVERABILITY

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

II. SINGLE AUDIT ACT REQUIREMENTS

If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133, the Contractor shall maintain records that identify all

federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance Numbers. The Contractor shall make the Contractor's records available for review or audit by officials of the federal awarding agency, the Comptroller General of the United States, the General Accounting Office, Employment Security Department, and the Washington State Auditor's Office. The Contractor shall incorporate OMB Circular A-133 audit requirements into all contracts between the Contractor and its Subcontractors who are sub-recipients. The Contractor shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.

If the Contractor expends \$500,000 or more in federal awards during the Contractor's fiscal year, the Contractor shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Contractor shall submit to the Contracting Officer named in this Contract the audit report and other appropriate documentation as required in OMB Circular A-133.

JJ. SITE SECURITY

While on Agency premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

KK. SMALL, MINORITY, AND WOMEN-OWNED BUSINESS ENTERPRISES

The Contractor shall provide to qualified small, minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Contract.

LL. SUBCONTRACTING

The Contractor shall not subcontract work or services contemplated under this Contract and/or use an outside consultant except as provided for in the Statement of Work without obtaining the prior written approval of the Agency for the authority to enter into subcontracts. Contractor acknowledges that such approval for any subcontract does not relieve the Contractor of its obligations to perform hereunder. The Agency retains the authority to review and approve or disapprove all subcontracts. At the Agency's request, the Contractor will forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

For any proposed Subcontractor the Contractor shall:

1. Be responsible for Subcontractor compliance with these General Terms and Conditions and the subcontract terms and conditions; and
2. Ensure that the Subcontractor follows the Agency's reporting formats and procedures as specified by the Agency.

MM. TAXES

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor staff be the sole liability of the Contractor.

NN. TERMINATION, SUSPENSION AND REMEDIES

1. Termination or Suspension for Cause

In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Before suspending or terminating this Contract, the Agency may, at its sole discretion, notify the Contractor in writing of the need to take corrective action. If corrective action is not taken the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

The Agency reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate this Contract. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

The Agency reserves the right to immediately suspend all, or part of, this Contract, and to withhold further payments, or to prohibit the Contractor from incurring additional obligations of funds when it has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of the Contractor under this Contract.

2. Termination for Funding Reasons

The Agency may unilaterally terminate this Contract in the event that funding from federal, state or other sources becomes no longer available to the Agency or is not allocated for the purpose of meeting the Agency's obligation hereunder. In the event funding is limited in any way, this Contract is subject to re-negotiation under any new funding limitations and conditions. Such action is effective upon receipt of written notification by the Contractor.

3. Termination for Convenience

Except as otherwise provided in this Contract, the Agency may, by ten (10) days' written notice, beginning on the second day after mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Agency shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

OO. TERMINATION PROCEDURE

Upon termination of this Contract, the Agency, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the TREATMENT OF ASSETS clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency and the amount agreed upon by the Contractor and the Agency for (1) completed work and service(s) for which no separate price is stated; (2) partially completed work and services; (3) other property or services which are accepted by the Agency; and (4) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the DISPUTES clause of this Contract. The Agency may withhold from any amounts due to the Contractor such sum as the Agency determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination and except as otherwise directed by the Agency, the Contractor shall:

1. Stop work under this Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of work under this Contract as is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency to the extent the Agency may require, which approval or ratification shall be final for all purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agency any property which, if the Contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agency; and
7. Take such action as may be necessary, or as the Agency may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

PP. TREATMENT OF ASSETS

1. Title to all property furnished by the Agency shall remain in the Agency. Title to all property purchased by the Contractor the cost of which the Contractor has been reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. The title shall only pass to the Contractor if the Agency specifically agrees to grant title in this Contract for asset(s) purchased.
2. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein, or approved by the Program Manager in writing, be used only for the performance of this Contract.
3. Property will be returned to the Agency in like condition to that in which it was furnished to the Contractor, normal wear and tear excepted. The Contractor shall be responsible for any loss or damage to property of the Agency in the possession of the Contractor which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain said property in accordance with sound management practices.
4. If any Agency property is damaged or destroyed, the Contractor shall notify the Agency and shall take all reasonable steps to protect that property from further damage.
5. The Contractor shall surrender to the Agency all property of the Agency upon completion, termination or cancellation of this Contract.
6. All reference to the Contractor under this clause shall include any employees, agents or Subcontractors.

QQ. USE OF NAME PROHIBITED

The Contractor shall not in any way contract on behalf of or in the name of the Agency. Nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the Agency.

RR. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing signed by authorized representative of the Agency.

SS. ENERGY POLICY AND CONSERVATION ACT

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).

TT. CLEAN AIR ACT

The Contractor shall comply with all applicable standards. Orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

UU. DAVIS-BACON ACT

The Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by Grantees and sub-grantees when required by Federal grant program legislation.

VV. COPELAND ANTI-KICKBACK ACT

The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair).

WW. WAGES AND HOURS

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)



**STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT
PO Box 9046 □ Olympia, WA 98507-9046**

EQUAL OPPORTUNITY IS THE LAW

29 CFR Part 37.30

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas: Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or activity, you may file a complaint within one hundred eighty (180) days from the date of the alleged violation with either: the recipient's Equal Opportunity Officer (or person whom the recipient has designated for this purpose); or the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until ninety (90) days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within ninety (90) days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within thirty (30) days of the ninety- (90-) day deadline (in other words, within one hundred twenty (120) days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within thirty (30) days of the date on which you received the Notice of Final Action.